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Hon. Fred L. Van Sickle

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT,

Plaintiff,

v.

DERUYTER BROTHERS DAIRY,  
INC.,

Defendant.

No. CV-08-3028-FVS

**STIPULATED PROTECTIVE  
ORDER**

Plaintiff, Community Association for Restoration of the Environment ("Plaintiff") and Defendant, DeRuyter Brothers Dairy, Inc. ("Defendant"), by and through their attorneys, hereby stipulate and move the Court for entry of this Protective Order, which shall govern the use, dissemination, and disclosure of certain documents and materials described herein and obtained by the parties through discovery in Case No. CV-08-3028-FVS currently pending between the parties. The parties agree as follows:

STIPULATED PROTECTIVE ORDER - 1  
Case No. CV-08-3028-FVS

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ORIGINAL

1           **A.     Scope of Order**

2           This Protective Order shall apply to all information, premises, documents,  
3 and things owned or controlled by the parties, or of any parents, subsidiaries,  
4 divisions, branches, affiliates, related companies, or licensees of any party, or of  
5 any other parties added or substituted in this case, that are subject to discovery in  
6 this action, including without limitation, testimony adduced at discovery and trial,  
7 depositions upon oral examination or upon written questions, answers to  
8 interrogatories, documents and things produced, information obtained from  
9 inspection of premises or things, and answers to requests for admission (hereafter  
10 “Information and Materials”).

11           **B.     Definitions**

12           As used in this Order, “Confidential” Information and Materials shall  
13 include all Information and Materials that have not been made public, the  
14 disclosure of which the disclosing party contends could cause harm to its business  
15 operations or provide improper advantage to others. “Confidential” Information  
16 and Materials shall include, but shall not be limited to, trade secrets within the  
17 meaning of the Uniform Trade Secrets Act and information that concerns or  
18 relates to (1) sales, marketing, manufacturing, or research and development, (2)  
19 financial performance, (3) manufacturing or other costs of doing business, (4)  
20 licenses or other confidential agreements, and/or (5) technical details of products  
21 or methods of doing business and Confidential Business Information (CBI) under  
22 the federal Clean Water Act (33 USC § 1318(b)(2)), RCW 43.21A.160, and  
23 applicable federal and state regulations.

24           **C.     Marking Requirements**

25           1.     All Information and Materials deemed “Confidential” will be so  
26 identified and labeled by the producing party.

1           2.     If qualified Information and Materials cannot be labeled, they shall  
2 be designated as "Confidential" in a manner to be agreed upon by the parties.

3           3.     In lieu of marking the original of a document or thing, if the original  
4 is not produced, the designating party may mark the copies that are produced or  
5 exchanged, but the other party, by its counsel, shall have the right to examine the  
6 original, to be provided with a full and complete copy thereof, and to call for  
7 production of the original at the trial in this action. Nothing in this Stipulated  
8 Protective Order, however, requires the production of privileged or work-product  
9 Information and Materials, or any Information and Materials that are otherwise  
10 not subject to discovery.

11           4.     The identification and labeling specified in Paragraphs C.1, C.2, and  
12 C.3 of this Order shall be made at the time when the answer to the interrogatory or  
13 the answer to the request for admission is served, and when a copy of the  
14 document or thing is provided to Plaintiff or Defendant. In the case of hearing  
15 and deposition transcript pages, the designating party shall advise opposing  
16 counsel of the specific pages to be maintained in confidence within thirty (30)  
17 days after the receipt of the transcript. During such thirty (30) day period, the  
18 entire transcript shall be deemed "Confidential."

19           5.     If a disclosing party discovers a failure to mark qualified Information  
20 or Materials as "Confidential," the other party shall be notified immediately and,  
21 to the extent practicable, the following corrective action shall be taken:

22           (a)    The receiving party shall notify all persons who have received  
23 the Information and Materials that the Information and Materials are  
24 designated "Confidential" and must be treated as designated in this Order;  
25  
26

1 (b) The receiving party shall take all reasonable steps to place the  
2 applicable "Confidential" label on the designated Information and/or  
3 Materials; and

4 (c) The receiving party shall treat the newly marked Information  
5 and Materials as set out in Paragraphs F and G of this Order.

6 **D. Designating Information and Documents**

7 1. In designating Information and Materials as "Confidential," a party  
8 will make such designation only as to that information that it in good faith  
9 believes to be "Confidential" as defined in Paragraph B of this Order.

10 2. If counsel for a party believes that questions put to a witness being  
11 examined during a deposition will disclose "Confidential" Information and/or  
12 Materials of his or her client, or that the answer to any question or questions  
13 requires such disclosure, or if documents to be used as exhibits during the  
14 examination contain such information, such counsel shall so notify opposing  
15 counsel and the deposition of such witness, or portions thereof, shall be taken only  
16 in the presence of appropriate persons as defined in Paragraph F hereof, counsel  
17 for the witness, if any, the stenographic reporter, and the owners, officers or  
18 employees of the party whose "Confidential" information is being disclosed.

19 **E. Redaction**

20 Redacted versions of "Confidential" materials that no longer contain any  
21 "Confidential" information, and that are not subject to this Order, may be used for  
22 any proper purpose.

23 **F. Access to "Confidential" Information and Materials**

24 1. It is the general intent of the parties to limit disclosure to the smallest  
25 number of persons, consistent with the needs of litigation.  
26

1           2. All access, possession, use, testing, inspection, review or copying of  
2 any Information or Materials designated as "Confidential" under this Order is  
3 governed by this Order and is limited to the following persons ("Qualified  
4 Persons"):

5           (a) The law firm of Foster Pepper PLLC; the law firm of Eymann  
6 Allison Hunter Jones, P.S.; and the Western Environmental Law Center,  
7 including attorneys, law clerks, stenographic, clerical, and paralegal  
8 employees of these firms.

9           (b) Independent experts or consultants for each party and their  
10 clerical personnel, who are not employees of the parties or their parents,  
11 subsidiaries, divisions, branches, affiliates, or competitors, (other than  
12 specifically for this action), and whose advice and consultation will be used  
13 by such party in connection with preparation for trial of this case.  
14 However, disclosures to such persons will be allowed only after the  
15 conditions set forth in Paragraph F.3 of this Order are satisfied.

16           (c) United States District Court, Eastern District of Washington,  
17 Judges and personnel employed by the United States District Court, Eastern  
18 District of Washington.

19           (d) Clients, to the extent that counsel believes they have an ethical  
20 duty to divulge such information for the purpose of giving advice or  
21 counsel. Prior to the disclosure of any "Confidential" Information and/or  
22 Materials to a client, disclosing counsel shall first obtain from each such  
23 client a copy of a signed undertaking as set forth in Exhibit B, including any  
24 information requested by Exhibit B.

25           3. Prior to any disclosure of "Confidential" Information and/or  
26 Materials to those parties named in Paragraph F.2.b. of this Order, counsel

1 desiring to disclose "Confidential" Information and/or Materials of the opposing  
2 party ("disclosing counsel") to any person shall obtain from each such person a  
3 copy of a signed undertaking as set forth in Exhibit A, including any information  
4 requested by Exhibit A.

5 4. Prior to the disclosure of "Confidential" Information and/or Materials  
6 to an owner, officer or employee of any party, disclosing counsel shall first obtain  
7 from each such person a copy of a signed undertaking as set forth in Exhibit B,  
8 including any information requested by Exhibit B.

9 5. The parties will attempt to resolve any disagreements about the  
10 designation of information and/or materials as "Confidential" on an informal basis  
11 before presenting the dispute to the Court by motion or otherwise. If unable to  
12 resolve any such disagreements, the objecting party shall file an appropriate  
13 motion with the Court. Information and/or Materials designated as "Confidential"  
14 shall remain under the protection of this Stipulated Protective Order until there is  
15 an order of the Court to the contrary or until there is an express written agreement  
16 between the parties. No party shall be obliged to challenge the propriety of a  
17 "Confidential" designation at the time of production, and failure to do so shall not  
18 preclude a subsequent attack on the propriety of such designation. In any motion  
19 for designation of "Confidentiality", it shall be the burden of the party seeking  
20 such designation to establish good cause for its need for "Confidentiality." The  
21 moving party must support its motion with a clear showing of a particular and  
22 specific need for the Confidentiality Order, supported by specific examples of  
23 harm that would be suffered because of the disclosure of information.

24 **G. Handling "Confidential" Information and Materials**

25 1. Copies of "Confidential" Information and Materials shall not be  
26 made public by the party to whom they are disclosed unless they become a part of

1 the public record in this action by agreement of the parties or by order or action of  
2 the Court. "Confidential" Information and Materials may be included in whole or  
3 in part in pleadings, motions, or briefs only if such Information and Materials  
4 shall be filed with the Court in sealed envelopes prominently marked with the  
5 caption of this proceeding and the appropriate notation:

6  
7 **Contains CONFIDENTIAL Information –**

8 **To Be Opened Only As Directed By the United States District Court, Eastern**  
9 **District of Washington**

10 2. Any Information and Materials marked with this or a similar legend  
11 may be filed with the Court in a single envelope. The parties stipulate that  
12 Information and Materials identified and labeled in accordance with this  
13 Paragraph shall be received in camera as directed by the Court.

14 3. Within sixty (60) days after the final judgment and the exhaustion of  
15 any appeals in this action or the settlement of this action, all Information and  
16 Materials covered by this Order, except those in possession of the Court, shall be  
17 returned or destroyed, except that counsel may maintain one copy of all  
18 correspondence, pleadings, and other documents. Subject to this exception,  
19 counsel shall certify to counsel for the producing party the return or destruction of  
20 all additional copies of Information and Materials so designated in their  
21 possession, custody, or control. To the extent that any Information or Materials  
22 have been filed under seal with the Court, such Information and Materials shall be  
23 retrieved by the party seeking to maintain the confidentiality of such Information  
24 or Materials.

25 **H. Miscellaneous**  
26



1           1.     This Order shall not prevent a party from applying to the Court for  
2 relief from the Order or any part thereof, or for relief from its application in any  
3 particular circumstance, or from applying to the Court for further or additional  
4 protective agreements or orders, or from agreeing among themselves to  
5 modification of this Order.

6           2.     This Order shall survive the final termination of this or related  
7 proceedings to the extent that the "Confidential" Information and Materials have  
8 not or do not become known to the public.

9           3.     No copy of any transcript of any deposition taken by any party that is  
10 designated in part or in whole as "Confidential" shall be furnished by the reporter  
11 to any person other than to counsel for the parties. Neither the original nor any  
12 copy of any transcript of any deposition taken in this proceeding shall be filed  
13 with the Court or used during the trial in this action until the parties' counsel have  
14 designated those portions, if any, of the transcript that are to be regarded as  
15 "Confidential." Upon such a designation, the designated portions of the transcript  
16 to be filed with the Court or used during the trial shall be filed under seal in  
17 accordance with Paragraph G of this Order, unless otherwise agreed by the parties  
18 or ordered by the Court.

19           4.     Each person having access to "Confidential" Information and  
20 Materials under this Order shall take all reasonable steps to comply with this  
21 Order.

22           5.     Nothing in this Order shall bar or otherwise restrict any attorney  
23 herein from rendering advice to his or her client with respect to this proceeding  
24 and, in the course thereof, referring to or relying upon his or her examination of  
25 "Confidential" Information and Materials; provided, that in rendering such advice  
26 and in otherwise communicating with clients , except as otherwise provided in




Paragraph F.2.d, the attorney shall not make specific disclosure to any person of any "Confidential" Information and Materials.

6. Any person bound by this Order may rely on a waiver or consent that is made by an attorney for a party as if that waiver or consent was made by that party or person, provided that such waiver or consent shall be either in writing or on record in a hearing, trial, or deposition transcript.

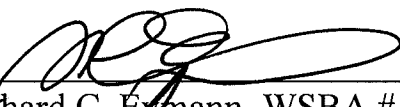
7. In the event any non-party is called upon to produce Information and/or Materials that it reasonably believes constitute or disclose trade secrets, commercial information or other information that it is entitled to maintain in confidence, such non-party may elect to become party to the terms of this Protective Order by serving a notice of its election on counsel for each party. After service of notice of election, this Protective Order shall be binding on and inure to the benefit of such non-party.

The parties, through their undersigned counsel, agree to the terms of this Stipulated Protective Order as of the last date shown below.

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE ENVIRONMENT

By:   
Charles M. Tebbutt, OSB #96579  
Western Environmental Law Center  
1216 Lincoln Street  
Eugene, OR 97401-3467

Date: 3/9/09

By:   
Richard C. Eymann, WSBA # 7470  
Eymann Allison Hunter Jones, P.S.  
208 West 2<sup>nd</sup> Avenue  
Spokane, WA 99201

Date: 3/23/09

STIPULATED PROTECTIVE ORDER - 9  
Case No. CV-08-3028-FVS

FOSTER PEPPER PLLC  
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SPOKANE, WASHINGTON 99201-0302  
Phone (509) 777-1604 Fax (866) 749-9343

1 DERUYTER BROTHERS DAIRY, INC.

2  
3 By: 

Date: 3/2/09

4 John Ray Nelson, WSBA #16393  
5 Lori A. Terry, WSBA #22006  
6 Foster Pepper PLLC  
7 422 W. Riverside Avenue, Suite 1310  
8 Spokane, WA 99201

9 **IT IS SO ORDERED.**

Dated this 1st Day of April, 2009.

10 *s/ Fred Van Sickle*

11 **United States District Judge**

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STIPULATED PROTECTIVE ORDER - 10  
Case No. CV-08-3028-FVS

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**EXHIBIT A**

Hon. Fred L. Van Sickle

**John R. Nelson, WSBA #16393**

**Lori A. Terry, WSBA #22006**

**Foster Pepper PLLC**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT,

Plaintiff,

v.

DERUYTER BROTHERS DAIRY,  
INC.,

Defendant.

No. CV-08-3028-FVS

**STIPULATED PROTECTIVE  
ORDER**

UNDERTAKING OF \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, state  
that:

1. My address is: \_\_\_\_\_

STIPULATED PROTECTIVE ORDER - 1  
Case No. CV-08-3028-FVS

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2. My employer is: \_\_\_\_\_

3. My present occupation or job description is: \_\_\_\_\_

4. I have/have never been employed and am/am not currently employed by any of the parties in this case, or by any parents, subsidiaries, divisions, branches, affiliates, or competitors of any of the parties.

5. I have received a copy of the Stipulated Protective Order in this case.

6. I have carefully read and understand the provisions of the Stipulated Protective Order.

7. I will comply with all of the provisions of the Stipulated Protective Order and understand that a violation of the Stipulated Protective Order or this Undertaking could result in sanctions against me.

8. I will hold in confidence and not disclose to anyone not qualified under the Stipulated Protective Order any "Confidential" Information or Materials disclosed to me.

9. I will return all Information and Materials containing or disclosing "Confidential" Information and Materials which come into my possession, and Information and Materials that I have prepared relating thereto, to counsel for the party that provided me with the "Confidential" Information and Materials.

10. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Stipulated Protective Order in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

**EXHIBIT B**

Hon. Fred L. Van Sickle

**John R. Nelson, WSBA #16393**

**Lori A. Terry, WSBA #22006**

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

COMMUNITY ASSOCIATION FOR  
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Defendant.

No. CV-08-3028-FVS

**STIPULATED PROTECTIVE  
ORDER**

UNDERTAKING OF \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, state  
that:

STIPULATED PROTECTIVE ORDER - 1  
Case No. CV-08-3028-FVS

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1. My address is: \_\_\_\_\_

2. My employer is: \_\_\_\_\_

3. My present occupation or job description is: \_\_\_\_\_

4. I have received a copy of the Stipulated Protective Order in this case.

5. I have carefully read and understand the provisions of the Stipulated Protective Order.

6. I will comply with all of the provisions of the Stipulated Protective Order and understand that a violation of the Stipulated Protective Order or this Undertaking could result in sanctions against me.

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9. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Stipulated Protective Order in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

STIPULATED PROTECTIVE ORDER - 2  
Case No. CV-08-3028-FVS

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